IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19-12-2006

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MR. JUSTICE M. JAICHANDREN

L.P.A.NO.6 OF 2002

1. Jayalakshmi Ammal
2. Mallika
3. Saroja
4. Shanthi
5. Amudha
6. Dhanalakshmi
7. Kamachi
8. Virudhamba
9. Indira
   Appellants 7 to 9 are declared as Major and 1st appellant discharged from guardianship vide order dated 13.6.2000 in C.M.P.Nos.6249 & 6224/2000 .. Appellants

Vs.

1. Chinnasamy Gounder
   S/o. Manjini Gounder

2. Parthasarathy Naidu,
   S/o. Ponnadi Naidu .. Respondents/Defendants 1,2

Appeal filed under Clause 15 of the Letters Patent against the judgment dated 3.8.1999 in A.S.No.41 of 1986 of the learned single Judge reversing the judgment dated 9.12.1985 in O.S.No.103 of 1984, on the file of the Subordinate Judge, Villupuram.

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For Appellants : M/s.B. Saraswathi
C.N.G. Niraimathi

For Respondent-2 : Ms.B. Vidhya
Respondent-1 : Served - No appearance

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J U D G M E N T

P.K. MISRA, J

Legal heirs of the original plaintiff are the appellants against the reversing judgment.

2. The suit was filed by one Sarangapani Gounder, the predecessor-in-interest of the present appellants for specific performance of the contract in alternative for payment of damages. The allegations in the plaint are as follows :-

Plaintiff and the first defendant entered into an agreement for the purchase of suit property by the plaintiff on 14.7.1984 in Kumarakuppam village and an agreement was executed on the same day indicating that the plaintiff should pay a sum of Rs.30,500/- out of which Rs.4,000/- would be paid as advance and the balance would be paid within two months, whereafter the sale deed should be executed by the first defendant. It was further provided that if the plaintiff fails to pay the remaining sale consideration of Rs.26,500/- within the stipulated time, he had to forego the advance of Rs.4,000/- paid as per the agreement. On the date of the agreement, the first defendant had delivered possession of the disputed property to the plaintiff, who ploughed the same on 18.7.1984 and thereafter planted casuarina on 15.8.1984. The original document of title relating to property, namely, the sale deed executed by Abirami Ammal and Velu in favour of the first defendant on 31.12.1981 was also handed over to the plaintiff. The plaintiff has been irrigating from the motor pumpset in S.C.13 in R.S.46/3 in exercise of his half share in such motor pumpset and part of the property was being used as passage. Defendant No.1 intended to sell such property for clearing all the family debts and also for purchasing extensive land in Pomboor village. Subsequently, on 20.7.1984, the first defendant received a further sum of Rs.700/-. The second defendant had purchased from the first defendant certain lands with half share in the motor pumpset in S.C.13 in R.S.46/3 in the suit village and he was also intending to purchase the very same property. When the second defendant became aware of the agreement between the plaintiff and the first defendant, he offered to purchase the suit property for a higher price of Rs.34,500/-. Thereafter the first and second defendants colluded with each other and threatened to forcibly dispossess the plaintiff. The plaintiff had issued a notice dated 19.8.1984 for executing the sale deed and for registration. Such notice was returned as refused. No result is known about the copy of the notice sent by registered post with acknowledgment due. Before issuing such notice, the plaintiff had sent his sons-in-law to persuade the first defendant to complete the transaction. The plaintiff has always been ready and willing to perform his part of the contract. He has made a separate deposit of the amount in Saving Banks account, which was filed along with the plaint. Accordingly, the suit had been filed for specific performance of the contract or alternatively payment of sum of Rs.22,700/- as damages for breach of the

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contract.

3. A written statement was filed by the first defendant denying the allegation relating to execution of the agreement and payment of Rs.4,000/-. It is stated by the first defendant that he had already entered into an agreement to sell the property with the second defendant on 5.6.1984 for Rs.29,000/- out of which a sum of Rs.10,000/- was received as advance. It was claimed that one Velu, brother-in-law of the Defendant No.1 is the resident of Kumarakuppam, who is also related to the plaintiff. One Kannan, co-brother of Defendant No.1 is also related to the plaintiff being agnate (Pangali). After the agreement dated 5.6.1984, those two persons came to the first defendant and threatened as to why the property was agreed to be sold to the second defendant and threatened with dire consequences in case the first defendant refused to sell the property to the plaintiff. Thereafter, they threatened the first defendant to put his signature on a blank paper and the first defendant was forced to do so under threat and coercion by signing in two or more plain papers and such papers have been converted as suit agreement. The signature of the first defendant was obtained by those two persons at the residence of Velu at 2.00 pm and at that time the first defendant was in drunken stage and he was not in senses. The other half of the disputed property has already been sold by Velu, the brother-in-law of the first defendant, to the second defendant. In usual course, the first defendant sold the remaining half to the second defendant. Title deed dated 31.12.1981 was in the house of Velu and such title deed had been given to the plaintiff by Velu on account of enmity. The other allegations relating to possession of the plaintiff has been denied. Pursuant to the agreement dated 5.6.1984 between the first defendant and the second defendant, the transaction was completed on 29.8.1984 for Rs.29,000/- and the second defendant is in possession from that date.

4. The second defendant filed a separate written statement, wherein it has been indicated that he had already purchased other half of the disputed property from its owner Velu on 13.6.1984 as even prior to his purchase he was enjoying such item as a lessee. Defendant No.1 entered into an agreement to sell the disputed property to Defendant No.2 on 5.6.1984 for Rs.29,000/- and received Rs.10,000/- as advance. Therefore, Defendant No.2 is a bona fide purchaser for value without any notice of any agreement. The genuineness of the agreement between the plaintiff and Defendant No.1 is denied. It is stated that the plaintiff was also aware of the agreement dated 5.6.1984, whereas the agreement dated 14.7.1984 was never within the knowledge of the second defendant. Possession was with Defendant No.2 from the date of the sale deed. Defendant No.2 did not receive any notice prior to the suit.

Since some amendment to the plaint was effected, Defendant No.1 has also filed an additional written statement, particularly relating to the damage claimed by the plaintiff.

5. On the aforesaid pleadings, the trial court framed the

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following issues and additional issues :-

"1. Whether the agreement dated 14.7.1984 relied on by the plaintiff is true and valid and binding on the 2nd defendant ?

2. Whether the sale deed relied on by the 2nd defendant is true, valid and binding upon the plaintiff ?

3. Whether the 2nd defendant is a bona fide purchaser for value without notice of alleged suit agreement dated 14.7.1984 ?

4. Whether the suit as framed is maintainable?

5. Whether the plaintiff is entitled to specified specific performance ?

6. Whether the plaintiff is entitled to permanent injunction ?

7. To what relief is the plaintiff entitled ?

Additional Issue :-

Whether the plaintiff is entitled to damages?"

6. On Issue No.1, the trial court found that Defendant No.1 had entered into an agreement with the plaintiff to sell the property and subsequently with a view to defeat the claim of the plaintiff, second defendant obtained a sale deed. The trial court further found that the evidence on record did not prove that casuarina trees had been raised by Defendant No.1 and the property had been sold to Defendant No.2 along with casuarina trees and possession of Defendant No.2 had not been established. In view of such findings, the trial court further found while dealing with Issue Nos.2 and 3 that Defendant No.2 was not a bona fide purchaser without notice of the suit agreement and the sale deed in favour of Defendant No.2 dated 29.8.1984 was not binding on the plaintiff. Under Issue No.6, the trial court found "So as the plaintiff was not in possession of the property, he is not entitled to the injunction." Issue No.4 was not raised. On the basis of findings under Issue Nos.1,2 and 3, while dealing with Issue No.5, the trial court held that the plaintiff is entitled to specific performance of the contract and obtain a sale deed from the defendants 1 and 2. In view of the aforesaid conclusion, the trial court further held that the plaintiff is not entitled to damages, which was claimed by way of alternative relief. Accordingly the suit was decreed.

7. The second defendant filed A.S.No.41 of 1986 against the aforesaid judgment and decree. During pendency of the appeal, the original plaintiff / Respondent No.1 had died and his legal representatives were brought on record as Respondents 3 to 11 in such appeal. Respondent No.2, the original Defendant No.1, had not entered appearance.

8. Learned single Judge reversed the decision of the trial court by coming to the conclusion that even though the agreement between the plaintiff and Defendant No.1 contained the signatures of Defendant No.1, such signatures were given on blank papers. In other words, according to

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the finding of the learned single Judge there was no agreement between the plaintiff and Defendant No.1 and similarly no amount had been paid. Since existence of the agreement was disbelieved, the learned single Judge did not give any finding on other aspects and allowed the appeal and dismissed the suit. Hence, the present appeal.

9. Learned counsel appearing for the appellants has assailed the findings of the learned single Judge and has submitted that the finding to the effect that there was no agreement between the plaintiff and Defendant No.1 is not sustainable. It has been further submitted that if the agreement between the plaintiff and Defendant No.1 is found to be genuine, in view of the finding of the trial court that Defendant No.2 was aware of the agreement between the plaintiff and Defendant No.1 and that Defendant No.2 was not a bonafide purchaser, the suit for specific performance should be decreed.

10. Defendant No.1, who was Respondent No.2 in A.S.No.41 of 1986 and Respondent No.1 in the present appeal has not entered appearance either before the learned single Judge or before this Court.

11. Defendant No.2, who was the appellant in the first appeal before the learned single Judge and Respondent No.2 in the present appeal, has entered appearance through his Advocate. It has been submitted on behalf of Respondent No.2 that the findings of the learned single Judge are based on discussion of materials on record and require no interference. It has been further submitted that even assuming that there was any agreement between the plaintiff and Defendant No.1, before such agreement, there was an agreement between Defendant No.1 and Defendant No.2 and a sale deed was executed by Defendant No.1 in favour of Defendant No.2 in pursuance of such agreement and Defendant No.2 being a bonafide purchaser for consideration on the basis of an earlier agreement, the decree for specific performance should not be granted to the plaintiff.

12. On the basis of the aforesaid submissions, the following questions arise for determination in this appeal :-

(1) Whether there was an agreement between Defendant No.1 and the plaintiff for sale of the property with the plaintiff ?

(2) Whether there was an earlier agreement for sale of the property by Defendant No.1 in favour of Defendant No.2 ?

(3) Whether Defendant No.2 is a bonafide purchaser for value ?

(4) Whether the decree for specific performance should be granted in favour of the plaintiff or the alternative prayer for damages should be granted ?

13. Question No.1:- As per the plaintiff's case, there was an unregistered agreement on 14.7.1984. Such agreement was scribed by P.W.2 and was signed by Defendant No.1 after understanding the contents thereof. The plea of Defendant No.1 on this score is that, being pressurised by Velu and Kannan he had given signatures on few blank papers which have

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been converted into an agreement in favour of the plaintiff and no amount had been paid by the plaintiff to Defendant No.1. Defendant No.1 in his evidence as D.W.1 had admitted that Velu was his own brother-in-law and Kannan was his co-brother. Even though he has specifically taken the plea of coercion, except his bald statement that being pressurized by Velu and Kannan he had given signatures on blank papers, there is no other material on record to substantiate such a stand. There is no material on record to show as to why Velu and Kannan, who were related to Defendant No.1 himself, had forced him to sign in blank papers for creating an agreement in favour of the plaintiff. It is of course true that the plaintiff has stated while deposing as P.W.1 in his cross-examination that Defendant No.1 has signed in one or two places in a blank paper. This by itself cannot be held sufficient to come to a conclusion that in fact Defendant No.1 had signed separately in three blank papers, two of which were on stamp papers, which were subsequently converted into agreement dated 14.7.1984. Even though it is for the plaintiff to prove that there was an agreement duly executed by Defendant No.1 for sale of the property in favour of the plaintiff, burden of proving the specific plea that signatures had been obtained by coercion on blank papers, which were subsequently converted into an agreement, was obviously on Defendant No.1. The mere uncorroborated testimony of Defendant No.1 is not sufficient to come to a conclusion that in fact Defendant No.1 has been forced to put his signatures on blank stamp papers which have been subsequently converted into agreement.

14. So far as the agreement Ex.A-1 is concerned, it has been proved through the evidence of P.W.2., the scribe. It is of course true that evidence of the scribe P.W.2 reads as if the consideration amount was Rs.9,500/-, whereas according to the plaintiff's case, the consideration fixed for the sale was Rs.30,500/-. There is no other significant aspect on record to discard the execution of Ex.A-1 agreement. Learned single Judge has cast doubt on such execution as there was discrepancy regarding the place where such Ex.A-1 was executed.

15. Learned single Judge has interpreted the pleadings to mean as if the said agreement was executed in Kumarakuppam. A careful reading of the pleadings merely indicates that the agreement was executed in respect of the land in Kumarakuppam village and it does not specifically indicate that the place of execution of the document was Kumarakuppam. In evidence, P.Ws. 1 and 2 have stated that the agreement was executed at Valavanoor. It is not dispute that in fact Kumarakupam is an hamlet of Valavanoor. In our opinion, there is no inconsistency about the place where Ex.A-1 was executed. Moreover, once the specific plea of Defendant No.1 that his signatures had been obtained by force on blank papers is discarded, the plaintiff's case that an agreement was executed for sale of the property gains ground. In such view of the matter, we are inclined to accept the contention that an agreement was executed, whereunder Defendant No.1 agreed to sell the disputed property in favour of the plaintiff for a

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sum of Rs.30,500/- out of which a sum of Rs.4,000/- had been received by Defendant No.1 and the balance amount was to be paid by the plaintiff before getting the sale deed executed.

16. Questions 2 and 3:- Once this finding is rendered and the finding of the learned single Judge is not accepted, the next question arises for consideration is as to whether there was prior agreement between Defendant No.1 and Defendant No.2 and whether Defendant No.2 was a bonafide purchaser.

17. There is no dispute that after the agreement between the plaintiff and Defendant No.1 was executed, a registered sale deed was executed by Defendant No.1 in favour of Defendant No.2 on 29.8.1984 under Ex.B-2, which has been subsequently registered on 13.9.1984. According to the plaintiff, a notice dated 19.8.1984 was issued to Defendant No.1. Ex.A-5 is the registered notice addressed to Defendant No.1. From the cover of the envelope it appears as if such notice was refused on 29.8.1984. A similar notice Ex.A-6 sent to Defendant No.2, however, was returned unserved as the addressee was not found. Since Defendant No.1 refused to receive the notice, he must be fixed with knowledge. However, the same principle cannot be made applicable to Defendant No.2 as the registered notice returned unserved. Therefore, it cannot be said that Defendant No.2 had knowledge of the agreement between the plaintiff and Defendant No.1, although Defendant No.1 had refused the notice. The plaintiff's bald statement that Defendant No.2 had knowledge of the agreement as it was disclosed to Defendant No.2 by the plaintiff and Defendant No.1 is not acceptable in the absence of any acceptable material on record.

18. The plaintiff claims that possession of the property was delivered to him on the date of the agreement and thereafter the plaintiff had planted casuarina trees. Of course, if the plaintiff's assertion that possession was handed over to him is accepted, such possession itself can be considered as notice. However, such evidence relating to delivery of possession is again shaky. There is no recital in Ex.A-1 agreement that possession has been delivered. It is difficult to accept the contention of the plaintiff that possession of the disputed property was handed over to him and subsequently he had been dispossessed. Therefore, it is difficult to conclude that Defendant No.2 had notice of the agreement between the plaintiff and Defendant No.1.

19. It is of course true that the original title deed, namely, the sale deed executed by Velu in favour of Defendant No.1 was in custody of the plaintiff. However, this by itself cannot be sufficient to come to a conclusion that in fact Defendant No.2 was aware of the agreement between the plaintiff and Defendant No.1.

20. Apart from the above, Defendant No.2 is relying upon a prior agreement dated 5.6.1984, where under Defendant No.1 had agreed to sell the property to Defendant No.2. It is the case of the plaintiff that when

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notice was issued by him to the defendants 1 and 2, such defendants have colluded with each other to create an anterior agreement dated 5.6.1984 and have also hastened to create a sale deed with a view to defeat the claim of the plaintiff. For the aforesaid purpose, it is contended by the appellants that the very fact that witnesses in respect of the sale deed were also the witnesses in respect of the agreement raises some suspicion. In the absence of any strong material on record, it is very difficult to accept such submission, particularly when it is found that Ex.B-1 is on a stamp paper, which was purchased on 1.6.1984. In the absence of any other material it is difficult to visualise that Defendant Nos.1 and 2 have created such a document. For all these reasons, the plea of Defendant No.2 that his sale deed was based on an anterior agreement and he was a bonafide purchaser for value is acceptable. Once such a conclusion is arrived at, obviously the appellants submission for granting a decree for specific performance cannot be accepted as against Defendant No.2.

21. Question No.4:- In the plaint, the plaintiff has prayed for an alternative relief for payment of damages. Since Defendant No.1 had entered into an agreement with the plaintiff, even after entering into an agreement with Defendant No.2, and because of such action on the part of Defendant No.1 obviously the plaintiff has sustained loss, we are inclined to grant the relief to the plaintiff on that score. Even though the extent of damages for plantation of casuarina trees cannot be accepted, in the facts and circumstances of the case, we are inclined to direct that Defendant No.1 shall refund a sum of Rs.4,000/- along with interest at the rate of 10% from the date of execution of such agreement. The evidence of payment of further amount of Rs.700/- is not proof worthy. Apart from the above, Defendant No.1 is liable to pay consolidated sum of Rs.10,000/- towards damages.

22. In the result, the appeal is allowed in part and Defendant No.1 is directed to refund a sum of Rs.4,000/- along with interest at the rate of 10% with effect from the date of the filing of the suit till to-day and further directed to pay a sum of Rs.10,000/- towards consolidated damages. Such decretal amount, if not paid within 60 days from the date of the judgment, shall carry interest at the rate of 6% thereafter. Defendant No.1 is also liable to pay cost of the present appeal to the appellant.

dpk

Sd/-
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Subordinate Court, Villupuram

2. The Sub-Assistant Registrar,
   Judicial Section, High Court, Madras.

3 The Record-keeper, V.R. Section,
   High Court, Madras.

+1 cc to Mr.T.Dhanyakumar, Advocate Sr.No.63743.

+1 cc to Ms.C.N.G.Niraimathi, Advocate Sr.No.63938.

MDR(CO)
dcp/24.5.07 JUDGMENT IN LPA.6/2002

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